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## ACTIVITY 5

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### How do we justify a property right? (allow 1 hour 15 minutes)

 Resources

 Textbook

 Online

Please read the extract from *Property Law Commentary and Materials* by Clarke and Kohler (Reading 3) and then read the extract from *Victoria Park Racing & Recreation Grounds Co. Ltd v. Taylor* (1937) 58 CLR 479 which you will find in *Smith*, pp. 14–15 (extract 1.1.3).

Please also read the following summary of the facts in *Moore v. Regents of University of California* 793 P.2d 479 (Cal. 1990) and when you have done so, use the internet to find and read part of the judgment of Panelli J beginning with the words ‘Moore also attempts to characterize the invasion of his rights as a conversion’ which you will find in section III: Discussion under the heading B Conversion.

You can find the decision by means of, for example, a Google search and typing in the name of the case.

#### *The facts*

In this case Moore underwent treatment for hairy-cell leukaemia at the Medical Centre of the University of California at Los Angeles. The physician who attended him recommended that Moore’s spleen be removed and decided with another of the defendants, a researcher, to obtain portions of the spleen. After removal of the spleen, Moore attended the Centre on a number of occasions. On each occasion samples were taken of his ‘blood, blood serum, skin, bone marrow aspirate and sperm’. The defendants, unknown to Moore, were conducting research on his cells with a view to establishing a cell line from his T-lymphocytes. The Regents subsequently applied for and obtained a patent on the cell line, naming the physician and the researcher as

inventors. Agreements were then negotiated for the commercial development of the cell line and products to be derived from it.

Please now consider the following questions.

- 1 Clarke and Kohler state that one reason for having property rights is to prevent disputes arising in relation to finite resources. **Can you think of a resource which is not subject to a limit on supply and to which property status is not accorded?**

**COMMENT**

You might mention, for example, oxygen and seawater. There is no need to allocate property rights in these because there is no shortage of supply.

- 2 **Can you think of an example of where a claim to a property interest has raised moral issues?**

**COMMENT**

In the past it was considered permissible to own a person as a slave. This is no longer considered morally justifiable.

- 3 **Explain the reasons given for denying property status to the rights being claimed in *Victoria Park Racing & Recreation Grounds Co. Ltd v. Taylor* and *Moore v. Regents of the University of California*.**

**COMMENT**

In *Victoria Park Racing*, the claimant was seeking to prevent the broadcasting of racing commentaries by the defendant from premises that overlooked the claimant's racecourse. The claimant was arguing that it had a 'quasi-property in the spectacle which the law will protect'. Latham CJ considered that a person was not capable of owning a spectacle. Dixon J took the view that there was no blanket protection given to things of value that might emanate from a person's enterprise. Such protection as existed was to be found under specific heads such as, for example, copyright and trade mark law. The interference was not with the claimant's land but with its business and this was not something that, in British jurisdictions, the courts would protect.

In *Moore v. Regents of the University of California*, Moore was claiming ownership of his cells and of the results of research that had made use of them. For a claim based on conversion to succeed Moore had to establish that he retained a property interest in them following their removal. The Supreme Court of California took the view that a balance had to be achieved between protecting the patient's right to make decisions and the need for research to be carried out free from the threat of legal action. Companies engaged in medical research would be unlikely to spend large sums on obtaining patents if they feared that an action might be brought against them. Whilst there was the possibility that the medical profession might abuse its position by obtaining consent from a patient in the very widest terms, to support a claim to a property interest would destroy the aim of encouraging research. Moore's claim, therefore, failed.